

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

TROY E. TILLERSON,

Plaintiff,

vs.

THE MEGA LIFE AND HEALTH  
INSURANCE CORPORATION, a  
corporation; TRANSAMERICA LIFE  
INSURANCE COMPANY F/K/A PFL  
LIFE INSURANCE COMPANY, a  
corporation; NATIONAL ASSOCIATION  
FOR THE SELF EMPLOYED A/K/A  
NASE, a corporation,

Defendants.

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CASE NO. 3:05-cv-985-MEF

**DEFENDANTS' COMBINED REPLY TO PLAINTIFF'S  
RESPONSE TO MEGA'S AND NASE'S MOTIONS FOR SUMMARY JUDGMENT AND  
PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT ON PLAINTIFF'S STATE LAW CLAIMS, CLAIMS FOR PUNITIVE OR  
EXTRACONTRACTUAL DAMAGES, AND JURY DEMAND  
BASED ON ERISA PREEMPTION**

Defendants respectfully submit this combined reply to (i) Plaintiff's response to the motions for summary judgment filed by Defendants The MEGA Life and Health Insurance Company ("MEGA") and the National Association for the Self-Employed, Inc. ("NASE")(collectively, the "Defendants"), and (ii) Plaintiff's response to Defendants' motion for summary judgment on Plaintiff's state law claims, claims for punitive or extracontractual damages, and jury demand based on ERISA preemption.<sup>1</sup> For the reasons set forth herein, MEGA and the NASE respectfully request this Court enter an Order granting summary judgment

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<sup>1</sup> Since the filing of Defendants' motion for summary judgment based on ERISA preemption, Defendant Transamerica Life Insurance Company, a signatory on such motion and the supporting brief, has been dismissed from this lawsuit with prejudice.

in favor of each of them on all of Plaintiff's claims contained in his Amended Complaint. Also, the Defendants have no objection if this Court determines that as a result thereof, the motion for summary judgment based on ERISA preemption should be deemed moot.

1. On July 26, 2007, the Defendants filed a motion and supporting brief for summary judgment based on ERISA preemption.

2. On August 2, 2007, MEGA and the NASE each filed a motion and supporting brief for summary judgment.

3. On August 20, 2007, Plaintiff filed a response to MEGA's and the NASE's summary judgment motions, conceding that there is insufficient evidence to create a genuine issue of material fact with regard to Plaintiff's misrepresentation and suppression claims. Plaintiff is requesting that the Court enter an Order denying Defendants' ERISA summary judgment motion, or in the alternative, enter an Order granting MEGA's and the NASE's summary judgment motions and holding that the ERISA summary judgment motion is moot.

4. Plaintiff's Amended Complaint is comprised of three counts for misrepresentation and suppression against the Defendants. *See* Plaintiff's Amended Complaint attached as Exhibit A to MEGA's and the NASE's briefs in support of summary judgment. Thus, entry of summary judgment on Plaintiff's misrepresentation and suppression claims will dispose of all of the claims asserted by Plaintiff against the Defendants in this case.

5. With respect to the ERISA summary judgment motion and Plaintiff's response opposing that motion, given that Plaintiff has conceded that summary judgment in MEGA's and the NASE's favor is appropriate and those claims therefore are to be dismissed, which in turn would resolve this case in its entirety, the Court does not need to address the issue of ERISA preemption of those claims.

6. Consequently, MEGA and the NASE do not oppose the entry of summary judgment in their favor with respect to any and all of the claims asserted by Plaintiff in his Amended Complaint, or a finding that as a result thereof, Defendants' ERISA summary judgment motion is moot.

7. Should this Court, however, decide to proceed to address the ERISA summary judgment motion, MEGA and the NASE respectfully request five days from that determination to file a reply to Plaintiff's response to that motion.

WHEREFORE, premises considered, MEGA and the NASE respectfully request that this Court enter an Order granting summary judgment in favor of each of them on any and all of Plaintiff's claims.

*s/Pamela A. Moore*

JAMES W. LAMPKIN II (LAMPJ7474)

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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2007 the foregoing document was electronically filed with the Clerk of this Court using the CM/ECF system, which will send notification of such filing to the following:

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*s/Pamela A. Moore*

COUNSEL